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E-filing

UNITED STATES DISTRICT COURT FOR
 THE NORTHERN DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT
 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

ABERCROMBIE & FITCH STORES, INC.
 dba HOLLISTER, HOLLISTER CO.
 CALIFORNIA, LLC

Defendants.

) Case No.:

CV 11 3162

) COMPLAINT

) CIVIL RIGHTS – EMPLOYMENT
) DISCRIMINATION

) JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of religion and to provide appropriate relief to Umme-Hani Khan who was adversely affected by such practices. Ms. Khan is Muslim. As alleged below, Abercrombie & Fitch Stores, Inc. dba Hollister (hereinafter “Abercrombie & Fitch”) and Hollister Co. California LLC (hereinafter “Hollister”) unlawfully discriminated against Ms. Khan by failing to accommodate her sincerely held

1 religious belief and practice of wearing a hijab (head scarf) and by firing her because of her
2 religion, Islam.

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4 JURISDICTION AND VENUE

5 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343, and
6 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII
7 of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000e-5(f)(1) and (3), and
8 Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

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10 2. The employment practices alleged to be unlawful were and are now being committed
11 within the County of San Mateo in the State of California which is within the jurisdiction of the
12 United States District Court for the Northern District of California. Venue is therefore proper in
13 the United States District Court for the Northern District of California.

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15 INTRADISTRICT ASSIGNMENT

16 3. This action is appropriate for assignment to the San Francisco Division of this Court as
17 the alleged unlawful practices were and are now being committed in San Mateo County, which is
18 within the jurisdiction of the San Francisco Division.

19
20 PARTIES

21 4. Plaintiff, the Equal Employment Opportunity Commission ("EEOC" or "Commission"),
22 is the agency of the United States of America charged with the administration, interpretation, and
23 enforcement of Title VII and is expressly authorized to bring this action by sections 706(f)(1)
24 and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

25 5. At all relevant times, Defendant Abercrombie & Fitch has been and is now an Ohio
26 limited liability corporation doing business in the State of California and the City of San Mateo
27 and has continuously had at least fifteen employees.
28

1 6. At all relevant times, Defendant Abercrombie & Fitch has continuously been an
2 employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g),
3 and (h) of Title VII, 42 U.S.C. §2000e-(b), (g), and (h).

4 7. At all relevant times, Defendant Hollister has been and is now a California limited
5 liability corporation doing business in the State of California and the City of San Mateo and has
6 continuously had at least fifteen employees.

8 8. At all relevant times, Defendant Hollister has continuously been an employer engaged in
9 an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII,
10 42 U.S.C. §2000e-(b), (g), and (h).

11 9. All of the acts and failures to act alleged herein were duly performed by and attributable
12 to all Defendants, each acting as a successor, agent, alter ego, employee, indirect employer, joint
13 employer, integrated enterprise and/or under the direction and control of the others, except as
14 specifically alleged otherwise. Said acts and failures to act were within the scope of such agency
15 and/or employment, and each Defendant participated in, approved and/or ratified the unlawful
16 acts and omissions by the other Defendants complained of herein. Whenever and wherever
17 reference is made in this Complaint to any act by a Defendant or Defendants, such allegations
18 and reference shall also be deemed to mean the acts and failures to act of each Defendant acting
19 individually, jointly, and/or severally.
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22 STATEMENT OF CLAIMS

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24 10. More than thirty days prior to the institution of this lawsuit, Umme-Hani Khan filed a
25 charge of discrimination with the Commission alleging violations of Title VII by Defendants.
26 The Commission has issued a Letter of Determination finding reasonable cause to believe that
27 Defendants Abercrombie & Fitch and Hollister collectively discriminated against Umme-Hani
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1 Khan because of her religion and therefore violated Title VII. Prior to instituting this lawsuit, the
2 Commission attempted to eliminate the unlawful employment practices alleged herein and to
3 effect voluntary compliance with Title VII through informal methods of conciliation, conference
4 and persuasion within the meaning of Section 706(b) of Title VII, 42 U.S.C. §§2000e-5(b) and
5 2000e-6. All conditions precedent to the institution of this lawsuit have been fulfilled.
6

7 11. Since at least February 2010, Defendants have engaged in unlawful employment
8 practices at their San Mateo California location in violation of Section 703(a)(1) of Title VII, 42
9 U.S.C. §2000e-2(a)(1). Ms. Khan is Muslim. In accordance with her religious beliefs, Ms. Khan
10 wears a hijab in public and when she is in the presence of men who are not members of her
11 immediate family. Defendants hired Ms. Khan to work as an Impact Associate at Hillsdale Mall
12 in San Mateo, California, on October 5, 2009. Ms. Khan was wearing a religious head scarf
13 called a hijab when she was interviewed and hired. Ms. Khan worked for Defendants without
14 incident, wearing her hijab, from October 2009 until February 2010. On or about February 11,
15 2010, Defendants' District Manager, Adam Chmielewski, observed Ms. Khan wearing a hijab in
16 the store. On or about February 15, 2010, at Mr. Chmielewski's request, Ms. Khan explained
17 that she believes that her religion, Islam, requires her to wear the hijab while in public. Ms.
18 Chmielewski suspended Ms. Khan that same day. Mr. Chmielewski consulted with corporate
19 Human Resources Director, Amy Yoakum and they determined collectively that Ms. Khan could
20 not continue working for Defendants while wearing a hijab because to do so violated Defendants
21 grooming policy known as the "Look Policy." Thereafter, Defendants fired Ms. Khan effective
22 February 23, 2010. These actions constitute discrimination against Ms. Khan on the basis of
23 religion.
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12. The effect of the practices complained of in paragraph 11 above has been to deprive Ms. Khan of equal employment opportunities and otherwise to adversely affect her status as an employee because of her religion, Islam.

13. The unlawful employment practices complained of in paragraph 11 above were and are intentional.

14. The unlawful employment practices complained of in paragraph 11 above were and are committed with malice and/or reckless disregard for the federally protected rights of Ms. Khan.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, Abercrombie & Fitch and Hollister, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practices which discriminate on the basis of religion.

B. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for their employees of all religions and which eradicate the effects of their past and present unlawful employment practices.

C. Order Defendants to make whole Ms. Khan by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, with interest, in amounts to be determined at trial.

D. Order Defendants to make whole Ms. Khan by providing compensation for past and future non-pecuniary losses caused by the above unlawful conduct, including pain and suffering, emotional distress, indignity, loss of enjoyment of life, loss of self-esteem, and humiliation, in amounts to be determined at trial.

E. Order Defendants to pay Ms. Khan punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper.

1 G. Award the Commission its costs in this action.

2 JURY TRIAL DEMAND

3 The Commission requests a jury trial on all questions of fact raised by its complaint.

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13 Dated: June 25, 2011

/S/ William R. Tamayo
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15
16 Dated: 6/27/11

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